

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
ANGEL MANUEL OCON,
Defendant.

Case No.: 13cr2530-JAH

**ORDER DENYING DEFENDANT'S
MOTION FOR COMPASSIONATE
RELEASE (Doc. No. 63)**

INTRODUCTION

Pending before the Court is Defendant Angel Manuel Ocon's ("Defendant") motion to reduce his sentence of imprisonment in light of the increasing risks to health that the coronavirus disease ("COVID-19") poses to incarcerated persons. *See* Doc. No. 63. Defendant seeks compassionate release pursuant to 21 U.S.C. § 3582(c)(1)(A). *Id.* Having carefully considered the pleadings, and for the reasons set forth below, Defendant's motion is **DENIED**.

BACKGROUND

On July 11, 2013, a one-count information charged Defendant with Importation of Methamphetamine, in violation of 21 U.S.C. §§ 952 and 960. *See* Doc. No. 13. On December 5, 2013, Defendant pleaded guilty to the one-count information. Doc. No. 28.

1 On July 28, 2014, the Court sentenced Defendant to the custody of Bureaus of Prisons
2 (“BOP”) for 77 months, followed by 4 years of supervised release. *See* Doc. No. 44.

3 On March 20, 2020, while on supervised release, the Probation Officer filed a
4 petition for a warrant with the Court alleging that Defendant submitted a positive drug test
5 and failed to submit a testing sample. Doc. No. 47. The Court elected to take no action. *Id.*
6 On May 14, 2020, the Probation Officer filed another petition for a warrant with the Court
7 alleging that Defendant submitted multiple positive drug tests, used a devise to circumvent
8 drug testing, and failed to submit a testing sample as directed. Doc. No. 49. The Court
9 granted the no-bail bench warrant. *Id.* On June 16, 2020, Defendant admitted to violating
10 conditions of supervised release, and the Court in turn revoked Defendant’s supervised
11 release. Doc. No. 59. Defendant was sentenced to a below-Guideline sentence of 4 months
12 in custody, followed by 30 months of supervised release. *Id.*

13 On August 10, 2020, Defendant filed the present 18 U.S.C. § 3582 motion, and seeks
14 compassionate release under 18 U.S.C. § 3582(c)(1)(A). Doc. No. 63. On August 14, 2020,
15 the Plaintiff United States of America (“Government”) filed an opposition to Defendant’s
16 motion. *See* Doc. No. 65. On August 17, 2020, Defendant filed a reply. Doc. No. 66.

17 **LEGAL STANDARD**

18 A court generally may not correct or modify a prison sentence once it has been
19 imposed, unless expressly permitted by statute or by Rule 35 of the Federal Rules of
20 Criminal Procedure. *United States v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003). Defendant
21 seeks modification of her sentence under the compassionate release provision of 18 U.S.C.
22 § 3582(c)(1)(A)(i), as amended by the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194
23 (Dec. 21, 2018). The amendment to § 3582(c)(1)(A) provided prisoners with two direct
24 routes to court: (1) file a motion after fully exhausting administrative appeals of the BOP’s
25 decision not to file a motion, or (2) file a motion after “the lapse of 30 days from the receipt
26 ... of such a request” by the warden of the defendant’s facility, “whichever is earlier.” 18
27 U.S.C. § 3852(c)(1)(A). Thereafter, upon considering the applicable factors set forth in
28 section 3553(a), the court may determine whether “extraordinary and compelling reasons

warrant such a reduction” and “that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” *Id.*; U.S.S.G. § 1B1.13(1)(A) & cmt. 1. “Exhaustion occurs when the [Bureau of Prisons] denies a defendant’s application[.]” *United States v. Mondaca*, 2020 WL 1029024, at *2 (S.D. Cal. Mar. 3, 2020) (internal citations omitted) A defendant who has not “requested compassionate release from the [Bureau of Prisons] [or] exhausted his administrative remedies” is not entitled to a reduction of her term of imprisonment. *United States v. Solis*, 2019 WL 2518452, at *2 (S.D. Ala. June 18, 2019).

DISCUSSION

In analyzing whether Defendant is entitled to compassionate release under 18 U.S.C. § 3582(c)(1)(A), the Court will determine whether the following three requirements are satisfied. First, Defendant must exhaust his administrative remedies. Second, Defendant must establish that the 18 U.S.C. § 3553 (a) sentencing factors “are consistent with” granting a motion for compassionate release. *United States v. Trent*, 2020 WL 11812242, at *2 (N.D. Cal. 2020). Third, Defendant must demonstrate that “extraordinary and compelling reasons”— as defined by the applicable Sentencing Commission policy statement—“warrant... a reduction.” 18 U.S.C. § 3582(c)(1)(A)(i).

A. Exhaustion of Administrative Remedies

As an initial matter, the Court finds Defendant satisfied the exhaustion of administrative remedies prior to bringing his motion for compassionate release. On August 6, 2020, Defendant applied for compassionate release with the Warden of the Central Arizona Florence Correctional Complex (a contract facility). Doc. No. 63-1 at Exh. B. The Warden denied Defendant’s application and noted that because Defendant is in the custody of the United States Marshal Service at a contract facility, the BOP would not evaluate him for compassionate release. *Id.* at Exh. C. Accordingly, the Court deems Defendant properly exhausted his administrative remedies pursuant to § 3582(c)(1)(A).

B. Section 3553(a) Factors

The compassionate release statute requires courts to consider § 3553(a) factors in

determining whether to reduce a defendant's sentence. *See* 18 U.S.C. § 3582(c)(1)(A). Those factors include, among other things, the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant and to provide the defendant with needed medical care in the most effective manner; and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. 18 U.S.C. § 3553(a).

Looking to the factors, the sentence imposed on Defendant must reflect the seriousness of the offense. Defendant argues that in light of COVID-19, a time served sentence is sufficient, but not greater than necessary to accomplish the goals of sentencing. *See* Doc. No. 63 at 20. However, the nature and circumstances of the offense do not support Defendant's argument. Defendant breached the Court's trust by committing repeated violations while on supervised release. Among other violations, Defendant failed to appear for drug testing on numerous occasion, tested positive for cocaine and methamphetamine, and attempted to circumvent the drug testing by altering his urine specimen. It is also important to note that the Court properly considered the § 3553(a) and § 3583(g) factors before imposing a below guideline range sentence of 4 months in custody. Moreover, in the Court's view, a time served sentence reduction would also not adequately reflect the seriousness of Defendant's offense of conviction, promote respect for the law, provide just punishment, or afford adequate deterrence to criminal conduct. *United States v. Shayota*, 2020 WL 2733993, at *1 (N.D. Cal. May 2020). Accordingly, a reduction in Defendant's sentence to time served is inconsistent with the policy considerations and the factors set for in § 3553(a).

C. Extraordinary and Compelling Reasons

Notwithstanding Defendant's inability to overcome the § 3553(a) factors, Defendant

1 argues his medical condition presents “extraordinary and compelling” reasons to warrant
2 compassionate release. Doc. No. 63 at 6.

3 A court may reduce a defendant’s sentence if it finds “extraordinary and compelling
4 reasons warrant such a reduction” and that “such a reduction is consistent with applicable
5 policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582 (c)(1)(A). A
6 defendant fulfills one of the numerous “extraordinary and compelling reasons” by
7 “suffering from a serious physical or medical condition...that substantially diminishes the
8 ability of the defendant to provide self-care within the environment of a correctional facility
9 and from which he or she is not expected to recover. U.S.S.G. § 1B1.12 cmt. 1(A)(ii). The
10 Sentencing Commission also requires that the defendant not pose a danger to the safety of
11 the community. *Id.* at 1B1.13(2).

12 Here, Defendant argues that extraordinary and compelling reasons exist for his
13 compassionate release because: 1) he suffers from asthma, hypertension, hepatitis C, and
14 diagnosed mental health conditions (ADHD, anxiety, and depression); and 2) Defendant is
15 at a higher risk of contracting COVID-19 as a result of his medical conditions. *See* Doc.
16 No. 63 at 6-15. The Government counters by arguing that: 1) Defendant’s asthma is
17 described as “mild intermittent”; 2) Defendant’s hepatitis C is described as asymptomatic
18 and requires no medical attention; 3) Defendant’s mental health conditions are not
19 recognized as COVID-19 risk factors; and 4) the medical records provided indicate that
20 Defendant is receiving the appropriate medications at the facility to manage his medical
21 conditions. Doc. No. 65 at 14-18.

22 Although the Court is mindful that individuals with certain medical conditions can
23 be more vulnerable to COVID-19, Defendant fails to persuade the Court that his medical
24 conditions qualify as “extraordinary and compelling” reasons for release within the context
25 of 18 U.S.C. § 3582 (c)(1)(A) and U.S.S.G. § 1B1.13. First, Defendant argues his asthma
26 is an established CDC risk factor that increases his likelihood of contracting COVID-19.
27 *See* Doc. No. 63 at 7. However, according to the Centers for Disease Control and
28 Prevention, “moderate to severe” asthma is the only listed form of asthmas that creates a

1 “higher risk of getting very sick from COVID-19.” *See*
 2 <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html> (last
 3 visited August 24, 2020). Moreover, the CDC reports there is not information as to whether
 4 hepatitis C or mental health conditions create an increased risk to COVID-19. *Id.* As for
 5 Defendant’s reported hypertension, a distinction exists between hypertension and
 6 pulmonary hypertension, with the latter being a medical condition specific to the lungs. *See*
 7 *United States v. Barry House*, 2020 WL 2557031, at *2 (N.D. Cal. May 2020) (Denying a
 8 defendant’s motion for compassionate release and noting that “while pulmonary
 9 hypertension is a risk factor, [the Defendant] appears to have essential, and not pulmonary,
 10 hypertension.”). Second, Defendant is only 50 years old and is not in a high risk age group
 11 that would make him more vulnerable to contracting COVID-19. *See United States v.*
 12 *Smeltzer*, 2020 WL 2797493, at *2 (S.D. Cal. May 2020) (defendant who is “48 years old
 13 and reflects no medical condition that would specifically make him more vulnerable to
 14 contract COVID-19” cannot demonstrate extraordinary and compelling reasons for
 15 compassionate release). Lastly, Defendant does not dispute the government’s
 16 representation that Defendant’s medical conditions are appropriately managed at the
 17 facility. Doc. No. 65 at 16.

18 Under the present conditions at Central Arizona Florence Correctional Complex,
 19 Defendant is neither terminally ill nor subject to a serious medical condition “that
 20 substantially diminishes the ability...to provide self-care within the environment of a
 21 correctional facility and from which he [] is not expected to recover.” U.S.S.G. § 1B1.13.
 22 While Defendant suffers from various medical conditions, he has not demonstrated how
 23 the conditions amount to extraordinary and compelling reasons for release under § 3582
 24 (c)(1)(A)(i). *See United States v. Luck*, 2020 WL 3050762, at *2 (N.D. Cal. June 2020)
 25 (“Chronic conditions that can be managed in prison are not a sufficient basis for
 26 compassionate release.”) (citations omitted); *see also United States v. Eberhard*, 2020 WL
 27 1450745, at *2 (N.D. Cal. 2020) (“General concerns about possible exposure to COVID-
 28

1 19 do not meet the criteria for extraordinary and compelling reasons for a reduction in
2 sentence set forth in the Sentencing Commission's policy statement.'').

3 **CONCLUSION**

4 For the reasons set forth above, Defendant's motion for compassionate release is
5 DENIED without prejudice.

6 **IT IS SO ORDERED.**

7
8
9 DATED: August 28, 2020

10 

11 Hon. John A. Houston
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28